



In The Supreme Court of the United States

78 - 89 TERM, 1978

THE STATE OF NORTH DAKOTA

Respondent

vs.

JULIE GOELLER

Petitioner

No. 78-89

BRIEF IN OPPOSITION

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ATTORNEY FOR RESPONDENT

IN THE
SUPREME COURT OF THE UNITED STATES

Case No. 78-89

THE STATE OF NORTH DAKOTA

Respondent

vs.

JULIE GOELLER

Petitioner

TO: THE SUPREME COURT OF THE UNITED STATES

The State of North Dakota, Respondent herein offers and presents to the Court the following Brief In Opposition to the Petitioner's Petition for Writ of Certiorari to the Supreme Court of the United States herein:

JURISDICTION

The Petitioner herein seeks to invoke the jurisdiction of the United States Supreme Court pursuant to Article 3, Sections 1 and 2 of the Constitution of the United States of America; Title 28, Section 21-01 (e) United States Code; and Rule 22, Subsection 1 of the Rules of the Supreme Court of the United States. It is unclear to the Respondent whether or not the Petitioner asks this Court to review Criminal No. 611 and Criminal No. 625 or whether she seeks to review for only Criminal No. 611. The Petitioner in her Petition states

that the North Dakota Supreme Court entered the decision in Criminal No. 625 on the 17th day of February, 1978 and that a Petition for Rehearing was denied on the 13th day of April, 1978. However, the Respondent would state that at 263 N.W. 2d, 135 there is no mention of a denying of a Petition for Rehearing. In the section entitled "Jurisdiction" of the Petition, the Petitioner states she seeks a review of only a case decided on January 17, 1978 and an Order denying Petition for Rehearing on April 13, 1978. It is not clear whether or not this means Criminal No. 611 as Criminal No. 611 was decided on March 7, 1978 and the Rehearing denied on April 13, 1978. Because the dates do vary and because it appears that the Petitioner seeks only a review of Criminal No. 611 the Respondent in this Response will address itself primarily to Criminal No. 611. The Respondent will further state that the evidence does not substantiate proper grounds that would entitle this Court to jurisdiction in this matter.

PETITIONER'S QUESTION PRESENTED

The Petitioner poses three general questions for consideration:

1. Whether or not a person engaged in investigatory work for the United States Air Force Reserve may sit in Criminal proceedings for the purposes of issuing Search Warrants, conducting initial appearances, setting bonds, issuing contempt citations, and ordering imprisonment;

2. Whether an Affidavit for Search Warrant by a police officer established probable cause for issuance of a Search Warrant;

3. Whether the Petitioner was denied due process due to an alleged delay in her initial appearance, not being given access to counsel, and denying her the right to make a telephone call.

STATEMENT OF THE CASE

On Wednesday, March 30, 1977, the Petitioner and three other persons were in the common kitchen area of a multiple dwelling in Valley City, North Dakota. At approximately 11:30 P.M., two North Dakota Crime Bureau agents entered the building after receiving an invitation to attend a party at the residence. After being invited in, they observed marijuana on the kitchen table. The North Dakota Crime Bureau agents were equipped with concealed radio transmitters. The Crime Bureau agents walked towards the table and observed a bag of marijuana sitting on the table between the Petitioner and one Sheldon Seaborn. At this point, the Petitioner recognized one of the agents and the other agent then called Valley City Police Officers who were waiting outside. The officers then entered the residence and arrested the Defendant and the three others.

Captain Kracht of the Valley City Police Department had secured an executed Affidavit for Search Warrant and had secured a Search Warrant from Judge C. James Cieminski, Judge of the Barnes County Court With Increased Jurisdiction. The Petitioner told Captain Kracht that the marijuana was all hers. Upon being arrested, all four individuals were removed from the premises and the evidence was seized.

GROUND'S FOR DENYING WRIT OF CERTIORARI

I.

The issue on which the North Dakota Supreme Court decided Criminal No. 611 is completely overlooked in the Petitioner's Petition for Writ of Certiorari. That issue is whether or not Crime Bureau agents may enter a residence by deception and upon entering therein seeing marijuana in plain view seize said marijuana. The North Dakota Supreme Court held that this was permissible and did not violate the Petitioner's 4th Amendment Rights.

However, the Petitioner in her Petition chooses to overlook this constitutionally permissible entry and seizure and rather attacks the Affidavit for Search Warrant. Because the original entry by the Crime Bureau agents did not violate the United States Constitution, the question of whether or not the Affidavit for Search Warrant was sufficient is irrelevant and moot.

In *Sorrells v. United States*, 287 U.S. 435, 441, 53 S. Ct., 210, 212, 77 L.Ed. 413 (1932), this Court stated that: "Artifice and stratagem may be employed to catch those engaged in criminal enterprises", further in *United States v. Glassel*, 488 S. 2d 143, 145 (9th Cir. 1973), *cert. denied*, 416 U.S. 941, 74 S. Ct. 1, 1945, 40 L.Ed.2d. 292 (1974), the Court stated that:

An officer may legitimately obtain an invitation into a house by misrepresenting his identity. . . . if he is invited inside the house, he does not need probable cause to enter, he does not need a warrant and, quite obviously, he does not need to announce his authority and purpose. Once inside the house, he cannot exceed his hope of visitation by ransacking the house generally but he may seize anything in plain view.

As to the issue of the magistrate's impartiality, the Petitioner in her Petition alleges that the Judge had been currently involved in criminal investigations in the area. As can be seen in Article XVII of the Petitioner's Appendix (at page 39 of the Petition) the Supreme Court received the following conclusion of law and recommendation to the Supreme Court from the Judicial Qualifications Commission:

. . . As an agent for the Air Force OSI, he (J. Cieminski), has conducted two investigations in North Dakota outside the confines of the Grand Forks Air Force Base, in Barnes and

Stutsman Counties, in the past two years, neither of which involved any criminal activities or other activities of a nature likely to result in appearances before him as Judge.

II.

For reasons previously stated in this Return, the Respondent sees no point in addressing the issue of probable cause for issuing the Search Warrant based on the Affidavit for Search Warrant. The reason being that there was a valid search performed by the Crime Bureau agents when they observed the contraband in plain view.

III.

As to the issue of denial of due process due to the delay in the Petitioner making her first appearance before the Court, the North Dakota Supreme Court in that 264 N.W.2d 472 correctly found that the incriminating statements made by the Petitioner occurred prior to the time of her arrest and were not made in an interrogation after she had made a request for an attorney. And the Court further held that the 38 hour delay without benefit of counsel does not, "under all circumstances, present a *per se* violation of the prohibition against unnecessary delay" thereof (Rule 5(s), N.D.R.Crim.P.). Goeller acknowledges that the record gives absolutely no clues as to why over 38 hours elapsed before her first appearance. She concludes that she was effectively denied bail for reasons of prejudice harassment, contrary to section 6 of the North Dakota Constitution. We cannot base the reversal of a conviction upon the mere assumption, by the Defendant, that the motives of the Valley City Police Department were improper."

It is respectfully submitted that the Petition for Writ of Certiorari as requested herein failed to properly invoke the Court's jurisdiction, and further fails to raise the question of a

denial of constitutional rights of the Petitioner herein. Further, that the cases involved herein do not raise a question of first instance before the Court in that the United States Supreme Court has in previous decisions established a definite role as to the framework of search and seizure and due process of law allegations raised by the Petitioners herein. Upon the foregoing, it is respectfully submitted by the Respondent that the Petition for Writ of Certiorari be denied in all respects.

Dated this 25th day of September, 1978.

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